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BOOK REVIEWS

The Nature of the Corporation as a Legal Entity, with Especial Reference to the law of Maryland. By James Treat Carter. Baltimore, M. Curlander, 1919. pp. xv, 239.

Dr. Carter's book contains a justification from the practical viewpoint for theoretical study of his subject; a brief historical sketch of corporate development; a discussion of existing theories on corporate nature, in which he reaches the conclusion that there is a real corporate entity; an examination of constitutional law cases on the corporation as a "citizen" and as a "person," in which he indicates rather strikingly the difficulties and inconsistencies of the ruling fiction theory; an admirable discussion of cases "disregarding the corporate entity," particularly those cases involving attempted use of the corporation as a device for concealment of assets and other illegal ends; and an appended special study of the law of Maryland.

The book is interesting and valuable. Its interest and its value do not, however, lie primarily in the contributions of the author to his subject either as a critic or as an independent thinker. In the field of constitutional law he largely follows and relies on Henderson's able study; in the more theoretical side of the work he relies largely on second-hand material when dealing with the Continental thinkers, takes his jurisprudence wholesale and without criticism from Gray, and writes nothing of his own to compare with the passage which he quotes from Freund (p. 72); even the excellent discussion of the cases involving illegal use of the corporation brings out no conclusions not reached independently by other students.

For all that, Dr. Carter's book is interesting and valuable. It presents for study a cross section in the development of the legal thought of a thinking man. It is a product of hard study, of an earnest attempt to break through incrustations of word and formula and fiction to the law-truths beneath. In his persistent attempt to analyze and isolate the varied and shifting concepts lying under a single label ("fiction theory," p. 80; "residence," p. 104; "public," p. 18); in his attitude toward the growth of law (p. 89; but cf. p. 43); in his insistence that a court's real justification be studied, and be made an articulate part of the reasoning of an opinion (*passim*, e. g. 141); in his recurring perception that *facts* exist independent of legal rules about them (pp. 11, 58, 72, 102) and must in thought and discussion be distinguished—in all these matters Dr. Carter shows insight into and appreciation of that practical jurisprudence which is the goal of modern legal teaching; and some portions of his book show considerable skill in applying that jurisprudence in a very practical way.

Yet no man can quickly master a new system of thinking in all its applications. Dr. Carter's thinking is not everywhere sustained; sometimes it lapses in vital points in his discussion. His treatment of the doctrines of representation is sadly inadequate when compared, for instance, to that of Seavey (*Rationale of Agency* (1920) 29 YALE LAW JOURNAL, 859); and the fault in the foundation mars his superstructure. And it is curious in a discussion of the *reality* of corporate will, to find support sought in "the familiar doctrine of law by which the intent, as distinct from the motive, *will be presumed* to exist." To this reviewer, the author's theoretical discussion of the existence of a corporate entity is at once the least and the most satisfactory portion of the book. The least, because in that portion particularly the author fails to carry through consistently principles of thinking in which other parts of the book prove him to be a real believer; the most, because it is impossible to read that portion of the book

with care without being forced into a definite position with regard to the subject-matter the author is there treating. It would have helped materially had Dr. Carter defined the "entity" under discussion as he does certain other chameleonic terms. Omission to do that has led in the discussion to baffling shifts from "corporation" as a group of people with a common interest, to "corporation" as a creature of the law. That the group of stockholders is a reality within the meaning of the term in normal human experience few men would deny; that when they embark capital in common in a common enterprise they acquire a new common interest with reference to which they are, within a reasonable meaning of the term, an entity, in real existing fact: a thing to some extent different from the sum of them severally, taken without the common interest—this also is believed to link up with our experience. But the existence of the group and of their common interest, and the desirability of machinery to enable them to do business conveniently to advance their common interest—all of which are *facts*—is in no wise to be confused with the machinery which the law sets up to accommodate them in the matter. An organized society, acting through its officers appointed to declare and administer its rules of life together, says to the group of stock-holders: "With reference to this wealth you have pooled, you may act as if you all together were a single individual distinct from any of you; and you may act through agents, whose powers, for your protection, must be given and exercised in a specified, orderly way." This is the creation of legal machinery, and nothing more. Thereafter, to state that the acts of the corporators or their agents, done in the prescribed fashion, have legal effect largely *as if* done by a new, distinct person, is to state a truth; but to state that there *exists* a new distinct person is to mistake a complex of legal rules for the fact whose existence the rules merely simulate for the sake of uniformity with the rules as to real persons. And if, instead of persons, we speak of entities, we can nevertheless find no real *entity* in that legal machinery, nor does the machinery create a separate corporate entity. What real entity there is, in any normal meaning of the term, is the group of corporators (together, often, with their agents, and the wealth they have pooled) and nothing more. Separate from the individuals such entity may in some measure be, so far as men in a group with a common interest may reach conclusions and do acts which they would not do each alone. Such a hypothesis as this is believed to serve the purposes a legal hypothesis should serve: it can explain the facts, all the facts, of the decisions; its adoption in further decisions would force consideration of the real issues, force a conscious compromise between the demands of actual economic conditions and the requirements of precedent. If study and thought over Dr. Carter's work leads men even to seek earnestly such a hypothesis—whether it be the above or another—then Dr. Carter's work is good, whether or not his own conclusions be accepted.

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Problems of Law: Its Past, Present, and Future. By John H. Wigmore. New York, Charles Scribner & Sons, 1920. pp. viii, 136. \$1.50.

This volume comprises three lectures given by Dean Wigmore on the Barbour-Page Lecture Foundation at the University of Virginia in 1920. The lectures are entitled "Problems of the Law's Evolution"; "Problems of the Law's Mechanism in America"; "Problems of World Legislation and America's Share Therein."

The first lecture begins with an analysis of law, which the author separates into its four essential elements, namely, A, "Human conduct relations"; B,